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August 16, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: In the Matter of Implementation of the Pay Telephone
Reclassification and Compensation Provisions of the
Telecommunications Act of 1996
CC Docket No. 96-128 Ex Parte

Dear Mr. Caton:

The attached document is provided to clarify BellSouth's position on an issue raised during a recent ex parte by representatives of BellSouth Corporation. Notification of this meeting was dutifully filed with your office on August 8. The document describes specific business arrangements used by Independent Payphone Providers in negotiating and securing long distance services for their respective location providers. BellSouth's position is that the Commission should grant competitive parity and permit BellSouth and the other RBOC payphone units the flexible use of these same business type arrangements.

Please associate this notification and the accompanying document with the referenced docket proceeding.

If there are questions concerning this matter, please contact the undersigned.

Sincerely,



Ben G. Almond
Executive Director-Federal Regulatory

cc: Michael Carowitz
Rose Crellin
Daniel Gonzales
Karen Gulick

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BellSouth Ex Parte Follow Up -- InterLATA Rights Discussion

August 16, 1996

INTRODUCTION AND OVERVIEW

Payphone service provision is a unique creature in the world of telecom regulation, with complex issues which significantly impact the public interest. Section 276 is a stand-alone section of the Telecommunications Act of 1996 which mandates a comprehensive approach to payphone industry issues in order to create a level playing field for all payphone industry members, promote competition, and encourage widespread payphone deployment.

Accordingly, Section 276 does not reference other sections of the 1996 Act but immediately does away with MFJ interLATA prohibitions (but only for RBOC payphone units; other RBOC lines-of-business are treated elsewhere in the Act) unless the FCC finds interLATA rights for RBOC PSPs not to be in the public interest. The Act also abolishes any and all subsidies for RBOC PSPs and requires RBOC PSPs to operate on an economic stand-alone basis, on the same footing as IPPs.

Specifically, the interdependent elements of Section 276 end all express and implied exchange service and exchange access subsidy revenues to RBOC PSP operations, require RBOC PSPs to purchase network services at arms length from RBOC LECs just as independent PSPs do, establish the groundwork for a per call compensation plan for all calls for all PSPs, and grant RBOC PSPs interLATA carrier selecting and contracting rights, coextensive with existing IPP rights in connection with the elimination of all subsidies and the establishment of strict anti-discrimination safeguards. Full simultaneous implementation of all rights for all PSPs is essential in order to achieve a pro-competitive market and maintain widespread payphone deployment -- especially in light of the fact that RBOC PSPs will be beginning with a zero percent share of an interLATA market which is already heavily contracted.

The RBOC Payphone Coalition has already submitted extensive comments and ex parte filings relating to the Section 276 rulemaking which show that it is in the public interest to permit RBOC PSPs to select, negotiate with, and contract with the interLATA carriers serving their payphones. As explained at pp. 40-43 of the RBOC Payphone Coalition comments of July 1, 1996, "[s]uch a right need not await general RBOC in-region relief pursuant to Section 271. Rather, Section 276(b)(1)(D) contemplates an immediate ability to bundle interLATA services with payphone services..." (p. 41).

BellSouth has prepared this ex parte follow-up white paper to emphasize the point that not only must RBOC PSPs be able to participate in selecting among IXCs, but they must also have the chance to compete by providing a single packaged service to their end user customers. As the Commission recognized in its NPRM, independent PSPs compete by packaging and providing 1+ and 0+ service at profitable payphone locations to payphone end users. NPRM at ¶ 70. Likewise, RBOC PSPs must be permitted to provide a single packaged service under their brand names. See RBOC Payphone Coalition comments of July 1, 1996 at page 43 n.57.

Indeed, the basic interLATA marketing practices which IPPs enjoy, namely aggregation and branded packaging of service to their end user customers, are the very essence of competitive payphone service provision and are essential to IPPs' success.

Therefore, a true level playing field cannot be created without specifically ruling that RBOC PSPs may engage in the same full scope of payphone service provision to their end user customers as do IPPs today.

I. RBOC PAYPHONE SERVICE PROVIDERS ARE ENTITLED TO THE SAME SCOPE OF INTERLATA CARRIER SELECTING AND CONTRACTING RIGHTS UNDER SECTION 276 AS INDEPENDENT PAYPHONE PROVIDERS NOW HAVE.

In Section 276, Congress presumptively granted RBOC PSPs the "same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones" pursuant to Section 276(b)(1)(D) of the 1996 Act. In other words this means that, subject to FCC determination, RBOC PSPs should have the same capabilities that IPPs have with respect to the aggregation and packaging (at the payphone set) of operator services and long distance traffic for payphone end users.

IPP's have long benefited from the ability to negotiate with location providers on the selecting and contracting with interLATA carriers. This capability has enabled IPPs to operate as local and long distance traffic aggregators as well as bulk packagers of long distance and operator services to payphone end users. These are common market practices among IPPs. (See attached ad examples.) It is essential that the Commission's rules allow RBOC PSPs to compete and serve payphone end user customers using these fundamental competitive payphone service provision practices to ensure the competitive parity intended by Congress.

A. IPPs Provide Long Distance Service on 1+ Traffic.

On 1+ traffic (paid for with coins at the set) from public payphone sets IPPs today buy bulk minutes from local exchange and interexchange carriers and provide the traffic to end users at a retail rate, including an additional margin on the per minute price. The IPP utilizes intelligence in "smart" payphone sets to rate the call and perform coin collection and return functions at the set. IPPs can either qualify as an operator service provider and brand the calls themselves, or route the 1+ traffic to another carrier.

In either event, IPPs are not telecommunications carriers. This is borne out by the Commission's recent interconnection order in 96-325, at paragraph 876, where it specifically noted that IPPs are not telecommunications carriers. Since RBOC PSPs will now be placed on the same footing as IPPs, RBOC-affiliated PSPs must be allowed to compete and provide similarly scoped services.

B. IPPs Aggregate and Provide Operator Services Traffic.

The methods IPPs use to process operator services calls vary according to market segment. For instance, in the corrections market, calls placed from inmate-only payphones are predominantly collect calls. IPPs operating in this market use store and forward technology to provide operator functionality through a payphone call administration system, or platform, usually located at the correctional facility's premise.

The inmate call begins as a 0+ call. The inmate dials zero plus a ten digit telephone number. The platform takes the dialed call, validates and seeks called party authorization for the call, records billing information, and sends the call over the network as a 1+ call. The completed call is later billed to the called party through clearinghouses, local exchange carriers, or a combination of both. IPPs thus purchase validation services, billing services, and bulk long distance minutes and in turn provide this package to end users (the called parties) at 0+ collect retail rates which includes an operator surcharge element.

In non-inmate markets, IPPs employ a variety of methods to make money on interLATA operator services calls. Some function as aggregators, that is, they enter into agreements with interLATA carriers to receive a percentage of retail revenue from all calls the IPP routes to the interLATA carrier. Other IPPs employ the same methods used in the inmate-only market to resell interLATA services. Still other IPPs negotiate wholesale arrangements with operator service providers and interLATA carriers and then provide these payphone services to end users at retail prices.

It is clear that to compete in any or all payphone market segments, an RBOC PSP must have the same abilities as an IPP to a packaged and provided competitive payphone service to end users.

II. COEXTENSIVE CARRIER SELECTING AND CONTRACTING RIGHTS ARE ESSENTIAL TO ACHIEVE A LEVEL PLAYING FIELD, TO PROMOTE COMPETITION AND TO ENCOURAGE THE WIDESPREAD DEPLOYMENT OF PAYPHONES FOR THE BENEFIT OF THE GENERAL PUBLIC

The basic issue really is pretty simple: will RBOC PSPs be able to compete on a level playing field if they cannot provide and package interLATA payphone services for end user customers? The answer is "no." For example, BellSouth's payphones have a significantly lower average volume than do IPP payphones, which tend to be placed at higher volume sites.

BellSouth will sustain an immediate and ongoing reduction in revenues as a result of Section 276(b)(1)(B)'s elimination of the exchange service and exchange access subsidies. In addition, BellSouth's payphone unit will assume full tariff rates for network services as a result of Section 276(a)'s nondiscrimination safeguards.

Therefore, RBOC PSPs must, as Section 276(b)(1)(D) contemplates, have full access to the same aggregation and branded packaging market opportunities as IPPs in order to achieve Congress' goals of promoting competition in the payphone services market and encouraging the widespread deployment of payphones for the benefit of the general public.

It must be noted that even with RBOC payphone unit access to the same standard interLATA market practices as IPPs involving aggregation and branded packaging, such access will not come easy. The market from which RBOC PSPs have been excluded has been competitive since 1985 and, location providers, IPPs (including carrier-owned payphone units, such as AT&T and MCI) and interLATA carriers have tied up much of the market in long term aggregation and branded packaging contracts.

In BellSouth's service area, independent PSPs have indeed flourished, as shown in the attached chart listing numbers of certified independent PSPs by state. Such competitors now hold a 54.8 percent share of local and intraLATA revenues among competitive payphone operations. Furthermore, BellSouth and other RBOC payphone units have a zero percent market share of interLATA revenues. The vast majority of interLATA revenues will continue to be

unavailable to RBOC PSPs, due to existing multi-year contracts among location providers and interLATA carriers.

III. SECTION 276 REMOVES ANY PROHIBITION AGAINST RBOC PSP PARTICIPATION IN INTERLATA CARRIER SELECTING AND CONTRACTING.

The interLATA carrier selection language contained in Section 276(b)(1)(D) of the 1996 Act was adopted nearly *verbatim* from Section 274(b)(1)(D) of House Bill 1555. Conference Report on S. 652, 159 (reprinted in The Telecommunications Act of 1996, Law & Legislative History, Pike & Fisher, 1996). As the House Report on H.R. 1555 on the operative language in Section 276(b)(1)(D) explains:

Currently, under a 1988 court interpretation of the MFJ, the RBOCs are prohibited from selecting the interLATA carriers serving their payphones, or even negotiating with location owners concerning the selection of interLATA carriers. Section 274(b)(1)(D) [renumbered in conference as Section 276(b)(1)(D)] *removes that prohibition.* (emphasis added).

Thus, Congress has expressly directed by statute that a judicially imposed interLATA limitation be removed in order to allow RBOC PSPs, which must operate on an economic stand-alone basis at arms length from RBOC telcos, to have the same interLATA payphone service business opportunities as IPPs.

The intended full scope of these interLATA business opportunities is shown by a comparison with the language in Section 276(b)(1)(E). That provision, which grants unequivocal selecting and contracting rights to all PSPs with respect to intraLATA carriers, contains, like its reciprocal counterpart in Section 276(b)(1)(D), no limitation on selecting and contracting with carriers other than the terms of any agreement with the location provider. Full interLATA aggregation and packaging opportunities for RBOC PSPs are just as important as full intraLATA aggregation and packaging opportunities for independent PSPs. BellSouth has strongly supported full intraLATA payphone service provision opportunities for IPPs during and after the legislative process, and the APCC and others supported reciprocal interLATA rights for RBOC PSPs during the legislative process as well. The intent of Congress in Section 276 should not be frustrated now by an inequitable denial of such interLATA rights.

IV. THE ELEMENTS OF SECTION 276 COMPRISE AN INTERDEPENDENT WHOLE WHICH IS SEPARATE FROM, AND MAKES NO REFERENCE TO, SECTIONS 271 AND 272 OF THE 1996 ACT.

Section 276 is complete unto itself. It contains its own definition section. It contains its own rulemaking objectives. It has its own nine-month regulatory timetable. There is simply no basis in the legislation or in the legislative history to construe Section 276 as being dependent upon Sections 271 and 272. Section 276 does not reference, directly or indirectly, any other provision of the Act. The 1996 Act is replete with cross-references to other sections within the Act. Section 276 contains no such internal cross-references.

Indeed, Congress made an explicit reference to the Commission's Computer Inquiry-III proceeding by docket number (90-623) in Section 276(b)(1)(C). Had Congress intended to tie the carrier selecting and contracting rights in Section 276(b)(1)(D) to the authorization requirements of Section 271 or to the structural separation requirements of Section 272, it would have done so by expressly identifying those provisions with similar precision. In fact, Congress' express reference in Section 276 to the Commission's *Computer III* non-structural safeguards is further proof that Congress intended for the provisions of Section 276 to stand alone, without reference to the safeguards contained in Sections 271 and 272.

Many parties and staffers who have studied Section 276 have remarked on the dramatic and broad-sweeping powers accorded to the FCC in Section 276 in order to truly create a level playing field on an accelerated schedule. Once again, this supports the finding that payphone service provision has been given unique, stand-alone treatment in Section 276.

V. BECAUSE THERE IS NO EVIDENCE THAT IT IS NOT IN THE PUBLIC INTEREST, THE COMMISSION MUST ALLOW FOR RBOC PSP PARTICIPATION IN INTERLATA CARRIER SELECTING AND CONTRACTING.

The 1996 Act grants RBOC PSP full interLATA carrier selecting and contracting rights coextensive with those of IPPs, "unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest." 47 U.S.C. § 276(b)(1)(D). This public interest determination is to be made with reference to the twin goals established by Congress in Section 276(b)(1) to direct the Commission in its rulemaking: to promote competition among PSPs and to promote the widespread deployment of payphone services to the benefit of the general public.

Nothing in Section 276 requires the Commission to make a public interest determination regarding RBOC interLATA carrier selecting and contracting, thus placing the burden of proof on those who would oppose equal rights and market parity. Having invited comments on this determination, *Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act 1996*, Notice of Proposed Rulemaking, ¶¶ 67-72 (June 6, 1996), the Commission has not received any record evidence to indicate that implementing Section 276(b)(1)(D) concurrent with the rest of Section 276 will frustrate competition among payphone providers or discourage the widespread deployment of pay telephones. Indeed, one IPP organization, in Reply Comments, joins various state commissions and other parties in their comments who support such equal rights. See Comments of the San Diego Payphone Owners Association, Reply Comments at 2 (July 12, 1996).

Moreover, end user consumers will benefit as well. To protect its reputation and serve its customers well, BellSouth has decided as a matter of policy that when it is permitted to participate in interLATA payphone service provision packaging, it will only package and provide service in such a way that end users of its service will never be charged more than major carrier rates.

Thus, the record strongly establishes that allowing full interLATA payphone service provision opportunities to be extended to RBOC PSPs, subject to the paramount rights of location providers and the protection of existing contracts, will enhance competition and further support multiple aspects of the public interest:

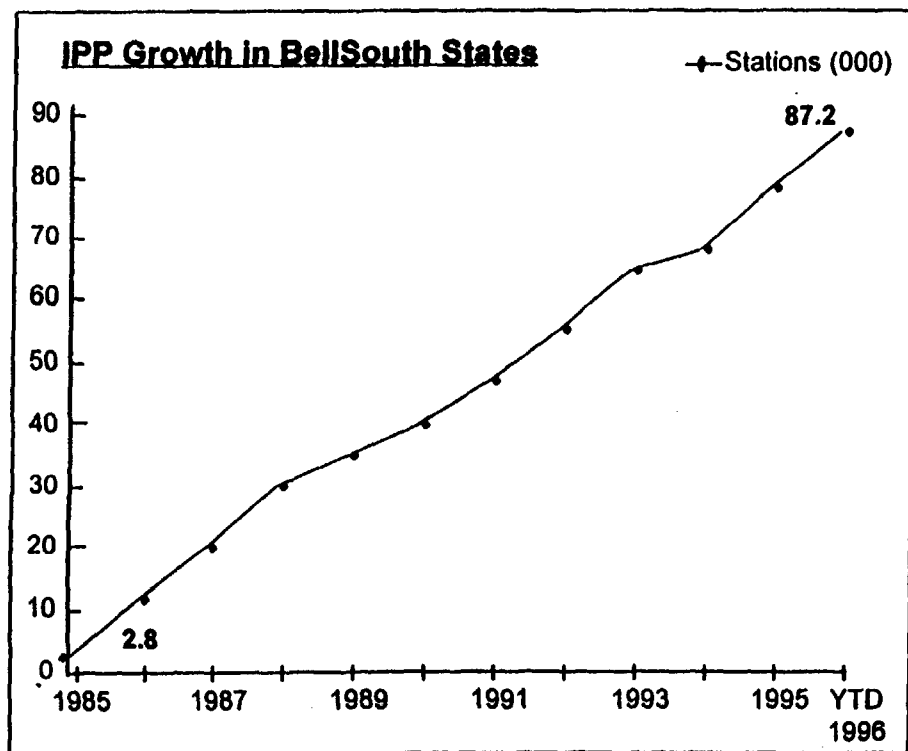
- Payphone service will be strengthened.
- Gouging and slamming will be reduced.
- Location providers and end users will have more choices.
- Widespread deployment of payphones will be encouraged.

See BellSouth Ex Parte, CC Docket No. 96-128 (August 8, 1996).

In order to truly attain a pro-competitive payphone industry environment that supports the public interest through widespread payphone deployment, all elements of Section 276, including RBOC PSP rights to participate in providing interLATA payphone services to end user customers, must be simultaneously implemented upon release of the Commission's order.

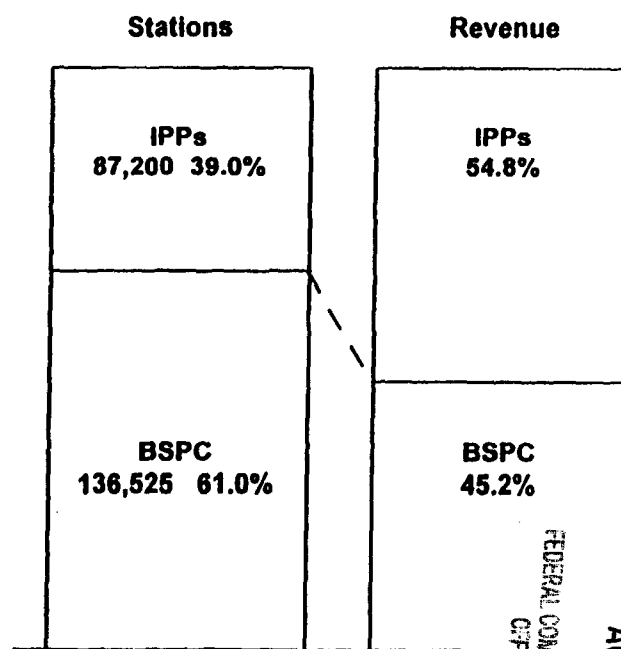
Attachments

Within BellSouth service territory (in the 9 states of AL, FL, GA, KY, LA, MS, NC, SC, TN), independent payphone providers (IPPs) have taken a dominant 54.8 percent market share of public payphone revenue. It is misleading and self-serving for the APCC, interexchange carriers and others to suggest that the RBOCS have monopoly control of the payphone market. In fact, MCI, AT&T, Sprint, and LDDS WorldCom all have active payphone business operations and compete vigorously with BellSouth, as do hundreds of IPPs.



Based on data as of May 1996
Produced by BellSouth Public Communications ("BSPC"), 7-12-96

**Public Payphones in BellSouth 9 State Region:
Estimated May 1996 Market Share**



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AUG 16 1996

BellSouth Exhibit A
CC Docket No. 96-128
JUL 15, 1996
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**Number of Certificated
Independent Payphone Providers (IPPs)
Operating Within the BellSouth Region
(As of 12/95)**

<u>State</u>	<u>Number of Certificated IPPs</u>
Alabama	110
Florida	1,016
Georgia	505
Kentucky	293
Louisiana	243
Mississippi	107
North Carolina	491
South Carolina	1,102
Tennessee	387

from APCC's *Perspectives*, July '96, p. 2
**"Intelli*Star[®] automated operator service
 generates more profit from non-coin calls.
 That's why I use it on every phone."** *

Alan Lieberman, Director of Operations
 National Public Phone Co., Denver, Colorado



**National Public Phone has been a
 loyal Intellicall Customer, using
 Intelli*Star on phones in key
 locations since 1989. Recently
 they decided to upgrade the rest of
 the phones in their route to gain
 both control and profits.**

*"With rate caps right around the corner and operating expenses
 putting pressure on profits right now, I just can't afford to share
 revenue on all of my non-coin traffic with an OSP"* *

Using Intelli*Star on your phones puts you right where
 you belong - in control! You set rates, you control the call
 records. Used in conjunction with our EZ*Star™ billing
 and collection service, Intellicall customers are making
60% commission or more on credit card and collect calls! *

*"I even send any call that can't be processed using
 Intelli*Star to Intellicall Operator Services. They pay
 me a good commission and I get my non-coin revenue
 all from one place."*

Intellicall is known as the Full Service Company because
 customers need more than just great payphones. We pro-
 vide the industry's best automated operator service, turn-
 key billing and collection, call validation and live op-
 erator services. Our customers needn't deal with
 multiple vendors. We really take care of them. *

*"The payphones are fantastic. Someone stole
 one of my phones and the police found it in the
 woods. They tied a rope to it and used a mo-
 torcycle to drag it over 500 yards. The thieves
 hadn't been able to break in through the rein-
 forced keypad and get the phone open. I opened
 it up, took out the board and it still worked per-
 fectly. I put it back in service in another phone that
 same day."*

Intelli*Star is available on all UltraTel® phones and is in-
 cluded as a standard feature on all AstraTel™ phones. Call
 today and regain control of your business with the best au-
 tomatized operator service, the best products, the best service
 and the best people in the industry.



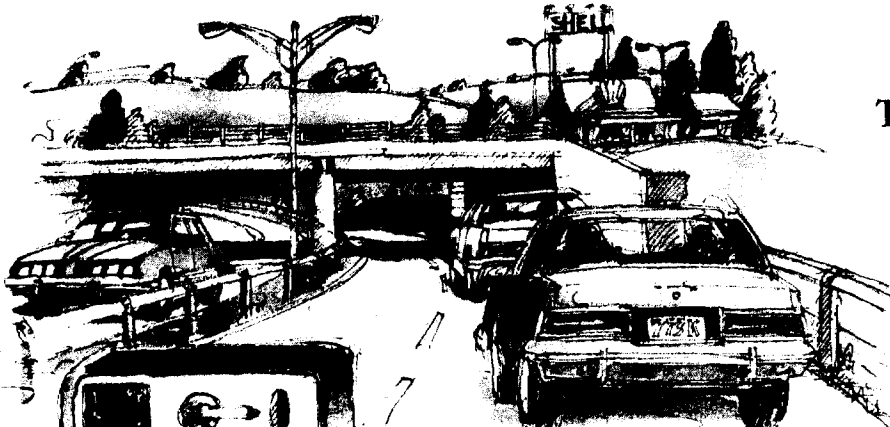
INTELLICALL®

1-800-800-9091

from APCC's Perspectives, May '96, p.8

"We use Intellicall phones because we make more money than other people with the same number of phones."

Evert Brown, President, Telco West



Telco West has installed Intellicall phones with Intelli*Star® store and forward at businesses along the nation's freeways since 1989.

"One reason is that when somebody dials 0 and the number they want to call, they get the bong immediately from the phone rather than waiting for some operator service center to connect."

*The exclusive Intelli*Star store and forward service puts you in control of every call, instead of depending upon a third party for prompt service, fair rates and accurate call reporting.* The result is satisfied customers who use your phones more often . . . and increased revenue to your bottom line.

*"We tried turning our Intelli*Star boards off once. It cost us \$30,000 in the first month. I couldn't get them back on fast enough."*

When Intelli*Star is combined with our turnkey billing and collection program, EZ*Star™, you can count on a guaranteed commission of over 60% on every non-coin call processed. There's no need for bad debt reserve and no additional fees.

"We just bought a 75 phone route and one of the main reasons was that they used all Intellicall phones."

Call today and an Intellicall Account Manager can use one of your current phone bills to show you just how much you would have made if you had been using Intelli*Star and EZ*Star.

INTELLICALL

2155 Chenault Drive, Suite 410, Carrollton, TX 75006
214-416-0022, FAX 214-416-2009

**1-800-800-9091
ext. 253**

Give Your Payphones the Ultimate Advantage.

Omniphone's Ultimate Advantage III is the most feature and flexibility rich public phone system on the market, utilizing a decentralized, data processing approach to call management.

Ultimate Advantage III's state-of-the-art technology delivers a seamless system, and savings available through lower operating costs result in considerable economic benefits. Ultimate Advantage III not only puts you in control of your system, it puts you in control of your profits. Give your payphones the Ultimate Advantage today. *

Security

The Advantage line controller can be located up to 15,000 feet away from the attached payphones, securing call information and technology from vandals. Adjustable "Wink" control helps eliminate secondary dial tone, and 10XXX 0+ access may be allowed while restricting 10XXX 1+ and international access. Alarms are also included in the system to signal potential revenue loss conditions for quick response.

Control

The Ultimate Advantage offers IPP selectable Validation and Billing & Collection services. Extensive SMDR call accounting simplifies phone bill reconciliation, and SMDR files are convertible to ASCII, DBF, and LOTUS formats for easier data management. The system offers positive answer acceptance of collect calls by DTMF and rotary pulse tones and multiple branding options, including FCC required double branding and collect call branding. 0+ to 1+ call conversion is selectable by call type, so conversion can be used on tariffed call types. *

Savings

With Advantage, you own the system -- there are no royalties or administration fees to pay and no revenue to share. Ultimate Advantage III provides internal validation for lower costs to you, and a rate quote provision is available for operator service with zero incremental costs. As an added benefit, most "smart" phones are retrofitable for the Ultimate Advantage, so IPP and obsolete equipment can be easily upgraded. *

Investment

Introduced in 1988, the Advantage system brought new applications and operating methods to a struggling industry. Since the day of its introduction, every piece of Advantage equipment has been upgradeable to the current level of software. In most cases, the Advantage, with a coin phone, costs about the same or even less than other so-called "smart" phones. The Advantage enables you to make an investment in the future of your company, today. *



P.O. Box 8739 ♦ Mobile, Alabama 36689
(334) 639-9639

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7/22/96 Davel Communications Closes \$1.8M Pay Phone Purchase
>DAVL

TAMPA, Fla. (Dow Jones)--Davel Communications Group Inc. (DAVL)
completed its \$1.8 million acquisition of 700 installed pay
telephones and other assets from Payphone Corp. of America.

In a press release, Davel said the phones are in the Baltimore
and Washington area.

Davel Communications operates more than 14,000 pay telephones
and provides long-distance operator services.

*

(END) DOW JONES NEWS 07-22-96

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